



**TOURO COLLEGE**  
**JACOB D. FUCHSBERG LAW CENTER**  
*Where Knowledge and Values Meet*

## Touro Law Review

---

Volume 8 | Number 3

Article 59

---

1992

### Self-Incrimination

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), [Courts Commons](#), [Criminal Procedure Commons](#), [Jurisprudence Commons](#), [Legal Ethics and Professional Responsibility Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

---

#### Recommended Citation

(1992) "Self-Incrimination," *Touro Law Review*: Vol. 8 : No. 3 , Article 59.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss3/59>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

## SELF-INCRIMINATION

*N.Y. CONST. art. I, § 6:*

*No person shall . . . be compelled in any criminal case to be a witness against himself . . . .*

*U.S. CONST. amend. V:*

*No person shall . . . be compelled in any criminal case to be a witness against himself . . . .*

### SUPREME COURT, APPELLATE DIVISION

#### FIRST DEPARTMENT

People v. Garcia<sup>1317</sup>  
(decided July 18, 1991)

The defendant asserted that his right against self-incrimination and his right to a fair trial, as guaranteed by the New York State<sup>1318</sup> and Federal<sup>1319</sup> Constitutions, were violated when the prosecutor sought to impeach him on cross-examination by referring to a prior case in which the defendant entered a plea of not guilty at his arraignment but eventually pled guilty to the charges.<sup>1320</sup> The court held that this line of questioning constituted substantial prejudice to the defendant and, thus, deprived the defendant of a fair trial.<sup>1321</sup> Consequently, the court reversed the defendant's conviction and remanded the case for a new trial.<sup>1322</sup>

---

1317. 169 A.D.2d 358, 573 N.Y.S.2d 257 (1st Dep't 1991), *appeal denied*, 79 N.Y.2d 857 (1992).

1318. N.Y. CONST. art. I, § 6.

1319. U.S. CONST. amend. V.

1320. *Garcia*, 169 A.D.2d at 361, 573 N.Y.S.2d at 258.

1321. *Id.*

1322. *Id.* at 365, 573 N.Y.S.2d at 261.

The defendant was convicted of criminal possession of a controlled substance in the third degree. He testified that he had been convicted of various felonies between March 1982 and April 1986 and that at each trial he had entered a plea of guilty. When the defendant was asked why he pled guilty to those crimes he answered, "I was guilty of them, sir."<sup>1323</sup> "When asked why he had not pled guilty in [this] case, defendant answered, 'because I'm not guilty of selling drugs, sir, I'm guilty of selling no controlled substance. It wasn't drugs that I gave that man.'"<sup>1324</sup>

The prosecutor, on cross-examination, asked the defendant "whether [or not] he recalled being arraigned on charges which led to . . . convictions . . . ."<sup>1325</sup> The defendant answered that he did. The prosecutor was then permitted to ask, over objection from defense counsel, "whether the defendant had ever pleaded not guilty in those cases . . . ."<sup>1326</sup> The defendant answered that he pled not guilty at arraignment. The prosecutor then commented: "So you were lying in court."<sup>1327</sup> The objections of defense counsel "were again overruled and the prosecutor was permitted to ask, '[S]o when you pled not guilty in front of a judge in those cases you were not telling the truth?'"<sup>1328</sup> Defendant finally answered in the affirmative, after repeatedly being asked this question. Objections by defense counsel were again overruled.<sup>1329</sup>

The court began its analysis by noting the prosecutor's duty is to the people and to the defendant in assuring a fair trial, as well as his obligation not to "mislead[] the jury about the true facts."<sup>1330</sup> Then, citing federal law, the court explained that a plea entered at arraignment is not an assertion of innocence, but a preservation of the right to defend. Thus, the burden is on the

---

1323. *Id.* at 360, 573 N.Y.S.2d at 258.

1324. *Id.*

1325. *Id.*

1326. *Id.*

1327. *Id.* at 361, 573 N.Y.S.2d at 258.

1328. *Id.*

1329. *Id.*

1330. *Id.* at 361, 573 N.Y.S.2d at 258-59 (citing *People v. Feretti*, 85 A.D.2d 40, 43, 447 N.Y.S.2d 162, 164 (1st Dep't 1982)).

state to “prov[e] every fact and element of the crime charged beyond a reasonable doubt.”<sup>1331</sup> Therefore, a plea of not guilty has no independent evidentiary significance. This lack of “evidentiary significance . . . is crucial to . . . a defendant’s right against self incrimination.”<sup>1332</sup> The plea of not guilty at arraignment is merely a device,<sup>1333</sup> otherwise, “[i]f the plea were testimonial or evidentiary, the court would have no power to demand it.”<sup>1334</sup>

The court found “substantial prejudice” to the defendant by this line of questioning because a lay juror is inexperienced as to the evidentiary rules and constitutional implications of the arraignment plea.<sup>1335</sup> These questions could possibly have led the jury to believe that defendant’s not guilty pleas were known “lies.” The use of these statements, therefore, could render defendant’s right against self incrimination meaningless and could not be dismissed as harmless.

This issue was raised in federal court in *United States v. Norris*,<sup>1336</sup> which held that “a plea of ‘not guilty’ in a previous unrelated prosecution in which the defendant was convicted despite that plea[,] cannot be characterized as a lie and used to attack the defendant’s credibility.”<sup>1337</sup> The court reasoned that the defendant “had a constitutional right to plead not guilty and should not be penalized for exercising that right.”<sup>1338</sup> The plea of not guilty was merely a “formal exercising of a [defendant’s] constitutional right to put the government to its proof.”<sup>1339</sup>

---

1331. *Id.* at 361-62, 573 N.Y.S.2d at 259.

1332. *Id.* at 362, 573 N.Y.S.2d at 259. *See also* N.Y. CONST. art. I, § 6.

1333. *See* N.Y. CRIM. PROC. LAW § 210.50 (McKinney 1982) (“Unless an indictment is dismissed or the criminal action thereon terminated or abated pursuant to the provisions of this article or some other provision of law, the defendant must be required to enter a plea thereto.”).

1334. *Garcia*, 169 A.D.2d at 362, 573 N.Y.S.2d at 259 (quoting *Wood v. United States*, 128 F.2d 265, 274 (D.C. Cir. 1942)).

1335. *Id.* at 364, 573 N.Y.S.2d at 260.

1336. 910 F.2d 1246 (5th Cir. 1990).

1337. *Id.* at 1246-47.

1338. *Id.* at 1247.

1339. *Id.*